

HB 1541

2004

A bill to be entitled

An act relating to pawnbroking; amending s. 539.001, F.S.;
 revising a definition to refer to the term "stolen" rather
 than "misappropriated"; revising the time period that a
 pawnbroker is required to secure and maintain goods that
 are the subject of a purchase transaction in certain
 circumstances; providing that inspections by law
 enforcement officials must be conducted in a reasonable
 manner so as not to disrupt the pawnbroker's business
 operations; limiting construction of the effect of the
 act; deleting a limitation requiring the conveying
 customer to be convicted of theft as a condition precedent
 to the court ordering such customer to repay the
 pawnbroker certain moneys; prohibiting a county or
 municipality from requiring a pawnbroker to pay any fee or
 charge that is not assessed to other retail businesses;
 revising references to the term "misappropriated," to
 conform; revising a reference from the term
 "misappropriation" to the term "theft," to conform;
 amending s. 539.003, F.S.; limiting the use of records
 relating to pawnbroker transactions; providing an
 effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraphs (c) and (f) of subsection (2),
 paragraph (c) of subsection (9), paragraphs (b) and (n) of
 subsection (12), paragraphs (a) and (b) of subsection (15),

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29 paragraphs (a) and (c) of subsection (16), and subsection (20)
 30 of section 539.001, Florida Statutes, are amended to read:

31 539.001 The Florida Pawnbroking Act.--

32 (2) DEFINITIONS.--As used in this section, the term:

33 (c) "Claimant" means a person who claims that his or her
 34 property was stolen ~~misappropriated~~.

35 (f) "Stolen" ~~"Misappropriated"~~ means stolen, embezzled,
 36 converted, or otherwise wrongfully appropriated against the will
 37 of the rightful owner.

38 (9) RECORDKEEPING; REPORTING; HOLD PERIOD.--

39 (c) All goods delivered to a pawnbroker in a pawn or
 40 purchase transaction must be securely stored and maintained in
 41 an unaltered condition within the jurisdiction of the
 42 appropriate law enforcement official for a period of 30 calendar
 43 days after the transaction if the pawnbroker is delivering the
 44 original transaction forms to the appropriate law enforcement
 45 official or, in the case of a purchase transaction, for a period
 46 of 15 days if the pawnbroker is electronically transferring the
 47 information from the transaction form to the appropriate law
 48 enforcement official. Those goods delivered to a pawnbroker in a
 49 purchase transaction may not be sold or otherwise disposed of
 50 before the expiration of such period. Inspections by law
 51 enforcement officials must be conducted in a reasonable manner
 52 so as not to disrupt the pawnbroker's normal business
 53 operations. The pawnbroker shall make all pledged and purchased
 54 goods and all records relating to such goods available for
 55 inspection by the appropriate law enforcement official during
 56 normal business hours throughout such period. The pawnbroker
 57 must store and maintain pledged goods for the period prescribed

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58 in subsection (10) unless the pledged goods are redeemed
 59 earlier; provided, however, that within the first 30 days after
 60 the original pawn, the pledged goods may be redeemed only by the
 61 pledgor or the pledgor's attorney in fact. Nothing in this
 62 subsection shall be construed to require the pawnbroker to
 63 attach information required to be maintained pursuant to this
 64 subsection to the individual items which have transferred to the
 65 ownership of the pawnbroker by operation of this subsection and
 66 which, subsequent to the appropriate hold period required by
 67 this subsection, have been offered for sale by the pawnbroker.

68 (12) PROHIBITED ACTS.--A pawnbroker, or an employee or
 69 agent of a pawnbroker, may not:

70 (b) Refuse to allow the agency, the appropriate law
 71 enforcement official, or the state attorney, or any of their
 72 designated representatives having jurisdiction, to inspect
 73 completed pawnbroker transaction forms or pledged or purchased
 74 goods during the ordinary hours of the pawnbroker's business or
 75 other time acceptable to both parties. The appropriate law
 76 enforcement official shall disclose to a claimant the name and
 77 address of the pawnbroker, the name and address of the conveying
 78 customer, and a description of pawned, purchased, or consigned
 79 goods that the claimant claims to be stolen ~~misappropriated~~.

80 (n) Knowingly accept or receive stolen ~~misappropriated~~
 81 property from a conveying customer in a pawn or purchase
 82 transaction.

83 (15) CLAIMS AGAINST PURCHASED GOODS OR PLEDGED GOODS HELD
 84 BY PAWNBROKERS.--

85 (a) To obtain possession of purchased or pledged goods
 86 held by a pawnbroker which a claimant claims to be stolen

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87 ~~misappropriated~~, the claimant must notify the pawnbroker by
 88 certified mail, return receipt requested, or in person evidenced
 89 by signed receipt, of the claimant's claim to the purchased or
 90 pledged goods. The notice must contain a complete and accurate
 91 description of the purchased or pledged goods and must be
 92 accompanied by a legible copy of the applicable law enforcement
 93 agency's report on the theft ~~misappropriation~~ of such property.
 94 If the claimant and the pawnbroker do not resolve the matter
 95 within 10 days after the pawnbroker's receipt of the notice, the
 96 claimant may petition the court to order the return of the
 97 property, naming the pawnbroker as a defendant, and must serve
 98 the pawnbroker with a copy of the petition. The pawnbroker shall
 99 hold the property described in the petition until the right to
 100 possession is resolved by the parties or by a court of competent
 101 jurisdiction. The court shall waive any filing fee for the
 102 petition to recover the property, and the sheriff shall waive
 103 the service fees.

104 (b) If, after notice and a hearing, the court finds that
 105 the property was stolen ~~misappropriated~~ and orders the return of
 106 the property to the claimant:

107 1. The claimant may recover from the pawnbroker the cost
 108 of the action, including the claimant's reasonable attorney's
 109 fees. ~~and~~

110 2. ~~If the conveying customer is convicted of theft, a~~
 111 ~~violation of this section, or dealing in stolen property, The~~
 112 court shall order the conveying customer to repay the pawnbroker
 113 the full amount the conveying customer received from the
 114 pawnbroker for the property, plus all applicable pawn service
 115 charges. As used in this paragraph, the term "convicted of"

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116 includes a plea of nolo contendere to the charges or any
 117 agreement in which adjudication is withheld. ~~;~~ ~~and~~

118 3. The conveying customer shall be responsible to pay all
 119 attorney's fees and taxable costs incurred by the pawnbroker in
 120 defending a replevin action or any other civil matter wherein it
 121 is found that the conveying customer was in violation of this
 122 paragraph.

123 (16) HOLD ORDERS; ISSUANCE; REQUIRED INFORMATION;
 124 PROCEDURES.--

125 (a) When an appropriate law enforcement official has
 126 probable cause to believe that property in the possession of a
 127 pawnbroker is stolen ~~misappropriated~~, the official may place a
 128 written hold order on the property. The written hold order shall
 129 impose a holding period not to exceed 90 days unless extended by
 130 court order. The appropriate law enforcement official may
 131 rescind, in writing, any hold order. An appropriate law
 132 enforcement official may place only one hold order on property.

133 (c) A hold order must specify:

134 1. The name and address of the pawnbroker.

135 2. The name, title, and identification number of the
 136 representative of the appropriate law enforcement official or
 137 the court placing the hold order.

138 3. If applicable, the name and address of the appropriate
 139 law enforcement official or court to which such representative
 140 is attached and the number, if any, assigned to the claim
 141 regarding the property.

142 4. A complete description of the property to be held,
 143 including model number and serial number if applicable.

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144 5. The name of the person reporting the property to be
 145 stolen ~~misappropriated~~ unless otherwise prohibited by law.

146 6. The mailing address of the pawnbroker where the
 147 property is held.

148 7. The expiration date of the holding period.

149 (20) CONFLICTING ORDINANCES.--Any county or municipality
 150 may enact ordinances that are in compliance with, but not more
 151 restrictive than this section, except that local ordinances may
 152 not restrict hours of operations other than between midnight and
 153 6 a.m. Any ordinance that conflicts with this subsection is
 154 void. Nothing in this section shall affect the authority of a
 155 county or municipality to establish land use controls or require
 156 a pawnbroker to obtain a local occupational license. A county or
 157 municipality may not require a pawnbroker to pay any fee or
 158 charge that is not assessed to other retail businesses within
 159 its jurisdiction.

160 Section 2. Section 539.003, Florida Statutes, is amended
 161 to read:

162 539.003 Confidentiality.--All records relating to
 163 pawnbroker transactions delivered to appropriate law enforcement
 164 officials pursuant to s. 539.001 are confidential and exempt
 165 from the provisions of s. 119.07(1) and s. 24(a), Art. I of the
 166 State Constitution and may be used only for official law
 167 enforcement purposes that are directly related to the recovery
 168 of stolen property and may not be used to profile pawnshop
 169 customers. This section does not prohibit the disclosure by the
 170 appropriate law enforcement officials of the name and address of
 171 the pawnbroker, the name and address of the conveying customer,

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172 | or a description of pawned property to the alleged owner of
173 | pawned property.

174 | Section 3. This act shall take effect July 1, 2004.